

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

KENT DICK SHEW
1402 Powell Street
San Francisco, California 94133

Certified Public Accountant Certificate
No. CPA 15858,

Respondent.

Case No. AC-2005-39

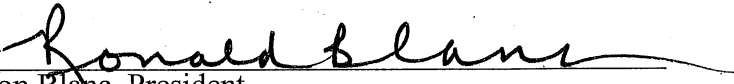
OAH No. N2006 060761

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order, relating to Certified Public Accountant Certificate No. 55982, issued to Kent Dick Shew, is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 20, 2006.

It is so ORDERED September 20, 2006.


Ron Blanc, President
FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

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of the State of California
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6 Attorneys for Complainant

7
8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 KENT DICK SHEW
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13 Certified Public Accountant Certificate
14 No. CPA 15858,

Respondent.

Case No. AC-2005-39

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**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 In the interest of settlement of this matter, consistent with the public interest and the
17 responsibilities of the California Board of Accountancy of the Department of Consumer Affairs,
18 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
19 be submitted to the Board for approval and adoption as the final disposition of the Accusation
20 No. 2005-39, relating to the Certified Public Accountant License of Respondent Kent Dick
21 Shew.

22 **PARTIES AND JURISDICTION**

23 1. Carol Sigmann, Complainant, is the Executive Officer of the California Board of
24 Accountancy (the "Board"). She brought this action solely in her official capacity and is
25 represented in this matter by Bill Lockyer, Attorney General of the State of California, and by
26 Jeanne C. Werner, Deputy Attorney General.

27 2. On or about October 31, 1970, the California Board of Accountancy issued
28 Certified Public Accountant Certificate Number CPA 15858 to Kent Dick Shew, Respondent.

1 The license history set forth in Accusation No. AC-2005-39 is true and correct. As stated
2 therein, Certificate No. CPA 15858 has been delinquent since August 31, 2003. A copy of
3 Accusation No. AC-2005-39 is attached as Exhibit A and incorporated herein by reference.

4 3. Respondent Kent Dick Shew is representing himself in this proceeding and has
5 chosen not to exercise his right to be represented by counsel.

6 4. Accusation No. AC-2005-39 was filed before the Board on June 21, 2005, and is
7 currently pending against Respondent. The Accusation and all other statutorily required
8 documents were properly served on Respondent, and Respondent has timely filed his Notice of
9 Defense contesting the Accusation.

10 **WAIVERS & CONTINGENCY**

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. AC-2005-39. Respondent has also carefully read, and
13 understands the effects of this Stipulated Settlement and Disciplinary Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to
18 compel the attendance of witnesses and the production of documents; the right to reconsideration
19 and court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws. Respondent voluntarily, knowingly, and
21 intelligently waives and gives up each and every one of these rights.

22 7. The parties understand and agree that, in signing this stipulation rather than
23 further contesting the Accusation, Respondent is voluntarily consenting to the adoption of this
24 Stipulated Settlement as the Board's Decision, enabling the Board of Accountancy of the State of
25 California to issue the following order without further legal process. Respondent represents that
26 no tender, offer, promises, threats or inducements of any kind whatsoever have been made by the
27 Board or any member, officer, agent or representative thereof in consideration of this settlement
28 offer or otherwise to induce him to so consent.

1 8. This stipulation shall be subject to approval by the Board. Respondent
2 understands and agrees that Complainant, her counsel and the staff of the Board may
3 communicate directly with the Board regarding this stipulation and settlement, without notice to
4 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
5 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the
6 Board considers and acts upon it.

7 9. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated
8 Settlement and Disciplinary Order shall be withdrawn. It shall be of no force or effect, except for
9 this paragraph. It shall have no evidentiary value, shall be inadmissible in any legal action
10 between the parties, and shall not be relied upon or introduced in any disciplinary, or other,
11 action or proceeding by either party hereto. In the event that the Stipulated Settlement is not
12 adopted, nothing recited herein shall be construed as a waiver of Respondent's right to a hearing
13 or as an admission of the truth of any of the matters charged. Communications pursuant to this
14 paragraph, and consideration of this matter, shall not disqualify the Board or other persons from
15 future participation in this or any other matter affecting Respondent. Respondent agrees that
16 should the Board reject this Stipulated Settlement and if this case proceeds to hearing,
17 Respondent will assert no claim that the Board was prejudiced by its review and discussion of
18 this Stipulation or of any records related hereto.

19 **ADMISSIONS AND FURTHER STIPULATIONS BETWEEN THE PARTIES**

20 10. Respondent admits the matters asserted in paragraphs 15 through 20 in the
21 Accusation No. AC-2005-39, with the exception that Respondent asserts that he has not retained
22 Mrs. Lim's records, and that he prepared the 2002 returns, which had no tax owing, but has failed
23 to provide them to Mrs. Lim upon her request. Respondent admits that he has been practicing
24 public accountancy, within the meaning of Code Sections 5051(a), 5051(b), and 5051(g), since
25 his license expired in August 2003, including preparing and signing, as the tax preparer, tax
26 returns for his practice's clients.

27 11. Based upon the foregoing admissions, Respondent stipulates that his license is
28 subject to discipline as charged in paragraphs 21 through 24 and 26 through 30 of the

1 Accusation, and that these admissions and charges provide the basis for the Board's discipline of
2 his license. Respondent agrees that his license is subject to discipline under Business and
3 Professions Code Section 5100, as set forth in Accusation No. 2005-39, and agrees to be bound
4 by the Board's imposition of discipline as set forth in the Disciplinary Order below. Respondent
5 further agrees not to take any action or make any public statement that creates, or tends to create,
6 the impression that any of the matters set forth in the Stipulated Settlement and Disciplinary
7 Order are without a factual basis.

8 12. The parties understand and agree that the period of license suspension provided
9 for herein shall not begin until it is demonstrated, to the satisfaction of the Board or its designee,
10 that Respondent has completed the necessary steps to renew, or bring his license current, in an
11 active status. The parties further agree that the suspension period shall not begin until
12 Respondent is notified in writing, by the Board or its designee, of the date on which the
13 suspension period shall begin. This notification shall be deemed to be incorporated within this
14 Stipulation and shall be deemed to be the suspension period adopted by the Board.

15 13. The parties understand and agree that facsimile copies of this Stipulated
16 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
17 force and effect as the originals.

18 **IN CONSIDERATION OF THE FOREGOING** admissions and stipulations, the
19 parties agree that the Board may, without further notice or formal proceeding, issue and enter the
20 following Disciplinary Order:

21 **DISCIPLINARY ORDER**

22 **IT IS HEREBY ORDERED** that Certified Public Accountant Certificate No. CPA
23 15858 issued to Respondent Kent Dick Shew is revoked. However, the revocation is stayed and
24 Respondent is placed on probation for a period of three (3) years, on the following terms and
25 conditions.

26 1. **Timing of Provisions.** This Order shall become effective on the date provided.
27 The Order provides for a thirty-day suspension (Condition Paragraph 2) and requires active
28 license status (Condition Paragraph 3). However, the thirty-day suspension period **shall not**

1 **begin until** Respondent is notified of the starting date, pursuant to Paragraph 12 above which
2 provides that, following a determination by the Board's designee that the conditions for active
3 licensure have been met to his/her satisfaction, said designee shall notify Respondent, in writing,
4 of the date of the commencement of the thirty-day suspension period. Said Notice shall be
5 deemed to be incorporated into this Order and shall not require further action on the part of the
6 Board.

7 2. **Actual Suspension.** Certified Public Accountant Certificate No. CPA 15858,
8 issued to Kent Dick Shew, is suspended for thirty days. However, the suspension period is
9 stayed pending confirmation that Respondent has completed all requirements, to the satisfaction
10 of the Board, to bring his license current in an active status pursuant to the preceding paragraph
11 and Paragraph 12 of the Stipulation. The suspension period shall begin pursuant to Notice to the
12 Respondent from the Board's designee. During the period of suspension the Respondent shall
13 engage in no activities for which certification as a Certified Public Accountant or Public
14 Accountant is required as described in Business and Professions Code, Division 3, Chapter 1,
15 Section 5051.

16 3. **Active License Status.** Respondent shall at all times maintain an active license
17 status with the Board, including during any period of suspension. If the license is expired or
18 delinquent at the time the Board's decision becomes effective, the license must be renewed prior
19 to the commencement of the suspension period and, in no event, later than 60 days of the
20 effective date of the decision. During any period of delinquency, Respondent shall engage in no
21 activities for which certification as a Certified Public Accountant or Public Accountant is
22 required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

23 4. **Restitution.** Respondent shall make restitution to Mrs. Lim in the amount of
24 \$ 150.00 and shall provide the Board with a written release from Mrs. Lim or other proof
25 acceptable to the Board that full restitution has been paid. Restitution shall be completed within
26 90 days of the effective date of this Order.

27 5. **Cost Reimbursement.** Respondent shall reimburse the Board \$10,000.00 for its
28 investigation and prosecution costs. The payment shall be made in eight (8) quarterly payments

1 of \$1250.00 (due with quarterly written reports), with the final payment being due one year
2 before probation is scheduled to terminate, or on such a payment plan as agreed to in writing by
3 the Board or its representative. Respondent's failure to make payments according to such a plan
4 shall constitute cause for revocation of this probation.

5 6. **Obey All Laws and Approved Namestyle.** Respondent shall obey all federal,
6 California, other states' and local laws, including those rules relating to the practice of public
7 accountancy in California. Specifically, Respondent shall not practice under a name (other than
8 his own) which has not been approved by the Board pursuant to Board Rule 67.

9 7. **Comply With Probation.** Respondent shall fully comply with the terms and
10 conditions of the probation imposed by the Board and shall cooperate fully with representatives
11 of the Board of Accountancy in its monitoring and investigation of the Respondent's compliance
12 with probation terms and conditions.

13 8. **Submit Written Reports.** Respondent shall submit, within ten (10) days of
14 completion of the quarter, written reports to the Board on a form obtained from the Board. The
15 Respondent shall submit, under penalty of perjury, such other written reports, declarations, and
16 verification of actions as are required. These declarations shall contain statements relative to
17 Respondent's compliance with all the terms and conditions of probation. Respondent shall
18 immediately execute all release of information forms as may be required by the Board or its
19 representatives.

20 9. **Personal Appearances.** Respondent shall, during the period of probation, appear
21 in person at interviews/meetings as directed by the Board or its designated representatives,
22 provided such notification is accomplished in a timely manner.

23 10. **Practice Investigation.** Respondent shall be subject to, and shall permit, practice
24 investigation of the Respondent's professional practice. Such a practice investigation shall be
25 conducted by representatives of the Board, provided notification of such review is accomplished
26 in a timely manner.

27 11. **Ethics Course/Examination.** Respondent shall take and pass with a score of 90
28 percent or better a Board approved ethics examination prior to the resumption of practice.

1 Notwithstanding any other provision of this Order, Respondent shall not resume practice until he
2 takes and successfully passes said exam, has submitted proof of same to the Board, and has been
3 notified by the Board that he has satisfied this condition for resumption of practice. In addition,
4 Respondent's failure to pass the required examination no later than 100 days prior to the
5 termination of probation shall constitute a violation of probation.

6 12. **Comply With Citations.** Respondent shall comply with all final orders resulting
7 from citations issued by the Board of Accountancy.

8 13. **Tolling of Probation For Out-of-State Residence/Practice.** In the event
9 Respondent should leave California to reside or practice outside this state, Respondent must
10 notify the Board in writing of the dates of departure and return. Periods of non-California
11 residency or practice outside the state shall not apply to reduction of the probationary period, or
12 of any suspension. No obligation imposed herein, including requirements to file written reports,
13 reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise
14 affected by such periods of out-of-state residency or practice except at the written direction of the
15 Board.

16 14. **Restricted Practice.** Notwithstanding the anticipated activation of his license,
17 Respondent shall be prohibited from performing audits of financial statements, reviews, and
18 compilations unless and until he has completed the required continuing education courses for
19 such practice and submitted acceptable proof of completion of said continuing education to the
20 Board.

21 15. **Violation of Probation.** If Respondent violates probation in any respect, the
22 Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and
23 carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation
24 is filed against Respondent during probation, the Board shall have continuing jurisdiction until
25 the matter is final, and the period of probation shall be extended until the matter is final. If
26 Complainant herein finds cause to file a Petition to set aside its stay order and reinstate its order
27 of revocation, that is, a "Petition to Revoke Probation", or to file such a Petition in conjunction
28 with an Accusation, Respondent agrees to pay all associated Board costs, including the accrued

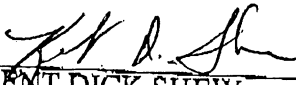
1 costs of probation monitoring, as well as the costs of investigation and prosecution associated
2 with a successful prosecution of said Petition by Complainant.

3 16. **Completion of Probation.** Upon successful completion of probation,
4 Respondent's license will be fully restored.

5 **ACCEPTANCE**

6 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
7 stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into
8 this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and
9 agree to be bound by the Decision and Order of the California Board of Accountancy.

10 DATED: August 10, 2006


11 
12 KENT DICK SHEW
13 Respondent

14 **ENDORSEMENT**

15 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
16 submitted for consideration by the California Board of Accountancy of the Department of
17 Consumer Affairs.

18 DATED: August 10, 2006

19 BILL LOCKYER, Attorney General
20 of the State of California

21 
22 JEANNE C. WERNER
23 Deputy Attorney General
24 Attorneys for Complainant

25 DOJ Matter ID: SF2005200181
26 90043603.wpd
27
28

Exhibit A

Accusation No. AC-2005-39

BILL LOCKYER, Attorney General
of the State of California
JEANNE C. WERNER, State Bar No. 93170
Deputy Attorney General
California Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
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Attorneys for Complainant

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In the Matter of the Accusation Against:

Case No. AC-2005-39

KENT DICK SHEW
1402 Powell Street
San Francisco, California 94133

ACCUSATION

Certified Public Accountant Certificate
No. CPA 15858,

Respondent.

Complainant alleges:

PARTIES, JURISDICTION & PROFESSIONAL STANDARDS

1. Complainant Carol Sigmann brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

2. On or about October 31, 1970, the California Board of Accountancy issued Certified Public Accountant Certificate Number CPA 15858 to Kent Dick Shew, Respondent. The Certificate, now subject to renewal every two years (on September 1 of odd-numbered years) pursuant to Code Section 5070.5, had been renewed, at some time on or before March 1989¹, in

1. The Board's records were transferred to the DCA's centralized computer system in March 1989 and, as a result, the underlying documentation related to the license history is unavailable prior to that date.

1 an "active" status.² The certificate was active from in or before March 1989 until its expiration
2 on September 1, 1989. Since that date, the Board records have reflected the status of the
3 certificate as follows:

4 A. Expired from September 1, 1989 through October 1, 1989 (no renewal fee and no
5 declaration of compliance with continuing education requirements), then renewed in an "active"
6 status from October 2, 1989 through August 31, 1991.

7 B. Expired from September 1, 1991 through September 27, 1991, then
8 renewed in an "active" status effective September 28, 1991 through August 31, 1993.

9 C. Expired from September 1, 1993 through September 24, 1993, when it was
10 renewed in an "active" status effective September 25, 1993 through August 31, 1995.

11 D. Expired from September 1, 1995 through September 22, 1995, when it was
12 renewed in an "active" status effective September 23, 1995, through August 31, 1997.

13 E. Expired from September 1, 1997 through October 26, 1997, when it was renewed
14 in an "active" status effective October 27, 1997, through August 31, 1999.

15 F. Renewed in an "active" status from September 1, 1999 through August 31, 2001,
16 and again from September 1, 2001 through August 31, 2003.

17 The Certified Public Accountant Certificate expired on August 31, 2003, and, having not
18 been renewed, is currently in a "delinquent" status.

19 3. Disciplinary Authority/Unprofessional Conduct. This Accusation is brought
20 before the Board under the authority of Section 5100 of the Business and Professions Code.³
21 **Code Section 5100** provides, in relevant part, that, after notice and hearing the Board may
22 revoke, suspend or refuse to renew any permit or certificate granted, or may censure the holder of
23 that permit or certificate for unprofessional conduct including, but not limited to, one or any
24

25 2. The "active" status denotes renewal with required continuing education, and authorizes
26 the practice of public accountancy, whereas "inactive" does not authorize the practice of public
27 accountancy, as provided in Board Rule 80.

28 3. All statutory references are to the Business and Professions Code unless otherwise
indicated.

1 combination of the following causes:

2 (c) Dishonesty, fraud, or gross negligence in the practice of public accountancy.

3 (g) Willful violation of the Accountancy Act or any rule or regulation⁴ promulgated by
4 the board under the authority granted under this chapter.

5 (i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

6 (k) ...(M)isappropriation of funds...or obtaining money...by fraudulent means or false
7 pretenses.

8 4. Licensed Practice. As pertinent herein, **Code Section 5050** requires that a person be
9 licensed by the Board in order to practice public accountancy in the State of California. **Code**
10 **Section 5051** states in pertinent part that a person shall be deemed to be engaged in the practice
11 of public accountancy if he or she does any of the following:

12 (a) Holds himself or herself out to the public in any manner as one skilled in the
13 knowledge, science, and practice of accounting, and as qualified and ready to
render professional service therein as a public accountant for compensation...

14 (b) Maintains an office for the transaction of business as a public accountant...(or)

15 (g) Prepares or signs, as the tax preparer, tax returns for clients...

16 5. Practice Under False, Misleading, or Unregistered Name Prohibited. **Code Section**
17 **5060** provides, *inter alia*, that no person or firm may practice public accountancy under any name
18 which is false or misleading or under any name other than the name under which the person or
19 firm holds a valid permit to practice issued by the Board (except that a sole proprietor may
20 practice under a name which is registered by the Board, is in good standing, and is neither false
21 nor misleading). (See also Rule 67, in paragraph 10 below.)

22 6. Client Record Retention. **Code Section 5037(b)** provides in pertinent part that a
23 licensee shall furnish to a client or former client records that would ordinarily constitute part of
24 the client's records, including any records belonging to, or obtained from or on behalf of, the
25 client which were received for the client's account. **Board Rule 68** provides that a licensee shall

26 _____
27 4. Board rules or regulations cited herein are codified in Title 16 of the California Code of
28 Regulations and will be referenced simply as a Board Rule, e.g., Cal. Code Regs., tit.16, § 5
will be referenced herein as Board Rule 5.

1 not retain a client's records after demand by or on behalf of a client.

2 7. Required Observance of Rules. **Board Rule 5** requires a licensee to observe Board
3 rules if the licensee is engaged in the types of activities performed by certified public accountants
4 or renders other professional services which include, but are not limited to, bookkeeping,
5 financial planning, investment planning, tax services and management services.

6 8. Response to Board. **Board Rule 52** provides, *inter alia*, that a licensee shall respond
7 promptly (within thirty days) to Board inquiries and shall provide true and accurate information
8 and responses to Board requests for information or documents.

9 9. Comply with Professional Standards. **Board Rule 58** requires that a licensee comply
10 with all applicable professional standards, including Section 10.22 of U.S. Department of the
11 Treasury, Internal Revenue Service, Circular 230, which requires that an individual practicing
12 before the Internal Revenue Service exercise "due diligence" in the following three areas:

13 Preparing, assisting, approving and/or filing returns and other documents with the
14 Service;
15 Determining the correctness of oral and written representations made by the practitioner
16 to the Treasury; and
17 Determining the correctness of oral and written representations made by the practitioner
18 to the client with reference to any matter administered by the Service.

19 10. Fictitious Name. **Board Rule 67** provides that no sole proprietor may practice under
20 a name other than the name set forth on his permit to practice unless such name has been
21 registered with the board. Said fictitious name registrations expire five years after the date of
22 issuance unless renewed.

23 11. Continuing Education Requirements for Practice.

24 A. **Board Rule 87** sets forth continuing education requirements for license renewal.

25 B. **Board Rule 94** provides that the failure, by a licensee engaged in active practice, to
26 comply with the Board's continuing education rules constitutes cause for discipline under Code
27 Section 5100.

28 12. Continuing Jurisdiction. Pursuant to **Code Section 118(b)**, the suspension,
expiration, or forfeiture by operation of law of a license issued by the Board shall not, during any
period in which it may be renewed, restored, reissued, or reinstated, deprive the Board of its

1 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
2 provided by law or to enter an order suspending or revoking the license or otherwise taking
3 disciplinary action against the licensee on any such ground. Further, **Code Section 5109**
4 provides, *inter alia*, that the expiration of a license shall not deprive the Board of jurisdiction to
5 proceed with any investigation or action or disciplinary proceeding against the licensee. **Code**
6 **Section 5070.6** provides that an expired permit may be renewed at any time within five years
7 after its expiration upon compliance with certain requirements.

8 13. Cost Recovery. **Code Section 5107** authorizes the Board's recovery of certain costs
9 which result from the investigation and prosecution of violations of the Accountancy Act.
10 Section 5107(a) of the Code provides in pertinent part that the executive officer of the Board may
11 request the administrative law judge, as part of the proposed decision in a disciplinary
12 proceeding, to direct any holder of a permit or certificate found to have committed violations of
13 the Accountancy Act to pay to the Board all reasonable costs of investigation and prosecution of
14 the case, including, but not limited to, attorneys' fees incurred prior to the commencement of the
15 hearing. A certified copy of the actual costs, or a good faith estimate of costs signed by the
16 Executive Officer, constitutes prima facie evidence of reasonable costs of investigation and
17 prosecution of the case.

18 14. Priority of Public Protection. **Code Section 5000.1** provides as follows: "Protection
19 of the public shall be the highest priority for the California Board of Accountancy in exercising
20 its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is
21 inconsistent with other interests sought to be promoted, the protection of the public shall be
22 paramount."

23 CIRCUMSTANCES SUPPORTING THE IMPOSITION OF DISCIPLINE

24 15. Respondent's Practice of Public Accountancy April 2001 to Unknown Date.

25 During a period of time known to Respondent but not known to Complainant, including
26 during "tax season" in 2001 (in or about April, 2001), and during "tax season" in 2003 (in or
27 about April, 2003), Respondent practiced public accountancy by "holding out," and/or by
28 maintaining an office, and/or by performing tax services for clients, as defined in Code Section

1 5051. As set forth in paragraph 2 above, Respondent's license was valid for practice during this
2 period until it expired on August 31, 2003.

3 16. Tax Services for Client A. Respondent performed tax services for Client A.⁵, an
4 elderly female, for approximately thirteen years ending in 2003 as described below. Respondent
5 was known to the client as a CPA.

6 A. Tax Year 2000. For the "tax year" 2000, in April 2001, Respondent sent Client A.
7 her Forms 1040A and 540A, which had been prepared by Respondent, for her signature and
8 filing with the respective taxing authorities. The cover letter used by Respondent bore the
9 letterhead "David S. Shew." The "Paid Preparer's" block was unsigned and bore the name
10 "David S. Shew."

11 B. Tax Year 2002. Respondent again undertook to prepare, in or about early 2003,
12 federal and state income tax returns for the tax year 2002 for Client A. On or about April 7,
13 2003, Client A paid Respondent, Kent Shew, \$150, as requested, for those tax services.
14 Client A provided to Respondent original client records for the preparation of her tax returns.
15 However, Client A did not receive completed returns for her signature and filing, nor did
16 Respondent return her records to her.

17 17. Demands From Client A. With reference to the matters alleged in paragraph 16. B.,
18 Client A made several attempts, in writing, by telephone, and in person, to communicate with
19 Respondent to return the fee and/or her tax returns. When her inquiries to Respondent went
20 unanswered, Client A inquired of the IRS and learned, in December 19, 2003, that her return was
21 never filed with the IRS. She requested from Respondent her original client records and again
22 requested her return and/or a refund for the services not performed. She received only an oral
23 promise from Respondent during a chance encounter in January 2004. In or about April 2004, on
24 behalf of Client A, her family member made a formal demand upon Respondent for the return of
25 several specific Forms 1099 related to interest, dividends, retirement and social security, and
26

27 5. The full name of the client will be provided in response to a discovery request from
28 Respondent, and is not herein disclosed to protect the client's privacy.

1 other client records in Respondent's possession. No response has been forthcoming from
2 Respondent.

3 18. Respondent's Practice Under Misleading/Unauthorized Name. Although licensed to
4 practice as a CPA until his license expired in August 2003, at times known to Respondent but not
5 Complainant, including the tax seasons beginning at least in the year 2001, Respondent has
6 avoided identifying himself as a licensed practitioner or as a CPA while, at the same time,
7 creating and/or maintaining the impression that his practice of public accountancy was
8 authorized, as follows. Respondent Kent Dick Shew practiced public accountancy under the firm
9 name "David S. Shew" without otherwise identifying himself in correspondence as either a CPA
10 or CPA firm. Respondent's letterhead bore the legend "David S. Shew" with the address
11 identical to that in the telephone directories described in paragraph 19 and also identical to
12 Respondent's address of record on file with the Board. The Board's records do not reflect that
13 the firm name David S. Shew is registered with, nor that the firm is licensed by, the Board.
14 Further, according to Board licensing records, David S. Shew was previously licensed by the
15 Board as a Public Accountant (PA) and David S. Shew died in January 1988. There is no Board
16 record of another David S. Shew being licensed by the Board.

17 19. Respondent's Practice ("Holding Out") While License Delinquent. Telephone
18 directory listings in the December 2003 and December 2004 Issues of the SBC San Francisco
19 SMART Yellow Pages directories contain listings for "Kent D. Shew, CPA" under the heading
20 for "Accountants-Certified Public" and list an office address identical to Respondent's address of
21 record on file with the Board. As set forth in paragraph 2 above, Respondent's license was not
22 valid for practice during this period as it had expired on August 31, 2003.

23 20. No Response To Board. Respondent has failed to respond to Board inquiries
24 regarding consumer complaints received by the Board, and failed to respond to Board inquiries
25 regarding the nature and status of his practice. The inquiries have included, but are not limited
26 to, written requests for information dated April 7, 2004; June 28, 2004; and February 4, 2005,
27 and the Board has received no response.

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FOR CAUSES FOR DISCIPLINE

21. Incorporating by reference the matters alleged in paragraphs 15 through 17 above, cause for discipline of Respondent's license exists pursuant to Code section 5100(c)(gross negligence in the practice of public accountancy) in that Respondent's conduct, in agreeing to perform tax services for his client, then failing to complete work he had contracted to perform and been paid to perform, constitutes an extreme departure from applicable professional standards, including IRS regulations.

22. Incorporating by reference the matters alleged in paragraphs 15 through 17 above, cause for discipline of Respondent's license exists pursuant to Code section 5100(c) in that Respondent's conduct, in agreeing to perform tax services for his client and accepting a fee to do so, then failing to complete the work without notice to his client, constitutes dishonesty in the practice of public accountancy.

23. Incorporating by reference the matters alleged in paragraphs 15 through 17 above, cause for discipline of Respondent's license exists pursuant to Code section 5100(i) in that Respondent's conduct, in agreeing to perform tax services for his long-time client and accepting a fee to do so, then failing to complete the work without notice to his client, constitutes fiscal dishonesty and/or breach of his fiduciary responsibility to his client within the meaning of Code section 5100(i).

24. Incorporating by reference the matters alleged in paragraphs 15 through 17 above, cause for discipline of Respondent's license exists pursuant to Code section 5100(k) in that Respondent's accepting a fee from his client and not refunding it when he did not perform the services involved constitutes the obtaining of money by fraudulent means or false pretenses.

25. Incorporating by reference the matters alleged in paragraphs 16, 17 and 20 above, cause for discipline of Respondent's license exists pursuant to Code section 5100(g) in conjunction with Code section 5037(b) and Board Rule 68 for his failure to return, and his unlawful retention of, his client's records.

26. Incorporating by reference the matters asserted in paragraphs 15, 16 and 18 above, Respondent is subject to disciplinary action for unprofessional conduct under Code Sections

1 5100 and Code Sections 5050, 5051, and 5060, and Board Rule 67, in conjunction with Code
2 Section 5100(g), in that Respondent has practiced public accountancy under an unauthorized
3 designation, misrepresenting himself as authorized to perform tax services under a false and/or
4 misleading name (that of the office of his deceased relative "David S. Shew") while avoiding the
5 use of his CPA designation in connection with his dealings with clients and filings with the IRS.

6 27. Incorporating the matters set forth in paragraphs 15, 16 and 18 above, Respondent is
7 subject to disciplinary action pursuant to Code Section 5100(i) in that, in representing to his tax
8 client(s) that he was authorized to represent them before taxing authorities as "David S. Shew"
9 when he was not authorized to do so, he repeatedly breached his fiduciary duty toward them,
10 violating his position of trust and confidential relationship.

11 28. Incorporating by reference the matters asserted in paragraphs 15 and 19 above,
12 Respondent is subject to disciplinary action for unauthorized practice under Code Sections 5100
13 and Code Section 5051 in conjunction with Code Section 5100(g), in that Respondent has been
14 "holding out" as a CPA by maintaining a listing in telephone directories during a period when his
15 license was expired.

16 29. Incorporating by reference the matters alleged in paragraphs 15 and 19 above,
17 Respondent is subject to disciplinary action pursuant to Board Rule 94 in conjunction with Code
18 Section 5100(g) in that he has engaged in public practice as defined in Code Section 5051
19 without complying with the Board's requirements for continuing education, including but not
20 limited to the requirements of Board Rule 87.

21 30. Incorporating by reference the matters alleged in paragraph 20 above, Respondent is
22 subject to disciplinary action pursuant to Board Rule 52 in conjunction with Code Section
23 5100(g) in that Respondent has repeatedly failed to respond in any manner to the Board's written
24 inquiries.

25 **OTHER MATTERS**

26 **Cost Recovery**

27 31. Pursuant to Code Section 5107, it is requested that the administrative law judge, as
28 part of the proposed decision in this proceeding, direct Respondent to pay to the Board all

1 reasonable costs of investigation and prosecution in this case, including, but not limited to,
2 attorneys' fees.

3 **Discipline Considerations**

4 32. To determine the degree of discipline, if any, to be imposed on Respondent,
5 Complainant alleges that on or about June 7, 1999, the Board issued an administrative citation
6 against Respondent entitled In the Matter of the Citation Against Kent Dick Shew before the
7 California Board of Accountancy, in Case Number CT-1999-127. The Description of Violation
8 in the Citation reads: "During the period from approximately April 1998 to November 1998
9 Kent Dick Shew, CPA 15858, retained client records belonging to Mr. Harry Lee." (Emphasis
10 supplied.) Respondent paid the \$1500 administrative fine assessed, and that decision is now
11 final and is incorporated by reference as if fully set forth. This matter is alleged in aggravation of
12 penalty in that its subject matter is similar to one of the allegations hereinabove.

13 33. Code Section 5000.1 is relevant to the penalty determination in this matter.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein
16 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

17 1. Revoking, suspending, or otherwise imposing discipline on Certified Public
18 Accountant Certificate Number CPA 15858, issued to Kent Dick Shew.

19 2. Ordering Kent Dick Shew to pay the California Board of Accountancy the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 5107;

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3. Taking such other and further action as deemed necessary and proper.

DATED: June 21, 2005.


CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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Shew Accusation.wpd